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Election procedures of the Committee on Budget and Finance of the International Criminal Court: comparative chart with the procedures of the Advisory Committee on Administrative and Budgetary Questions of the United Nations and the Finance Committee of the International Seabed Authority

Working paper by the Secretariat

A. Introduction

1. The present working paper has been prepared by the Secretariat at the request of the Coordinator of the Working Group on the Assembly of States Parties — Preparatory Documents. It offers in tabular form a comparison of the provisions establishing on the one hand the Committee on Budget and Finance and on the other the Advisory Committee on Administrative and Budgetary Questions of the United Nations and the Finance Committee of the International Seabed Authority.[1] It also describes the procedures that have been applicable in the election of the latter two bodies and on that basis suggests possible options for consideration in an election concerning members of the Committee on Budget and Finance.

[1] It may also be noted that, with respect to the International Tribunal for the Law of the Sea, the Committee on Budget and Finance is a committee established as such by the Tribunal. It consists of officials of the court (Vice-President as Chairman and five other members). It is therefore not covered in the present paper. In addition, rule 53 bis of the Rules of Procedure of the Meeting of States Parties to UNCLOS provides for an open-ended working group on financial and budgetary matters to be established by the Meeting of States Parties, at which financial and budgetary matters will be discussed (SPLOS/71).

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B. Comparative chart

Committee on Budget and Finance	*Advisory Committee*	*Finance Committee*
Size of committee		
12 members.	**16*** members, including at least three financial experts of recognized standing.	15 members.
Nationality		
No two members shall be nationals of the same State.	No two members shall be nationals of the same State.	No two members shall be nationals of the same State Party.
Criteria		
The Assembly shall **elect** the members.	The General Assembly shall **appoint** an Advisory Committee consisting of 16 members.	Members shall be **elected** by the Assembly.
Election on the basis of **equitable geographical distribution**.	Members shall be **selected** on the basis **of broad geographical representation, personal qualifications and experience**.	Due account shall be taken of the need for **equitable geographical distribution and representation of special interests**.
Members shall be experts of **recognized standing and experience in financial matters** at the international level from States Parties.	At least three **financial experts of recognized standing**. The three financial experts shall not retire simultaneously.	The following groups of States shall also be represented on the Committee by at least one member: States Parties which, during the last five years for which statistics are available, have either consumed more than 2 per cent in value terms of total world consumption or have had net imports of more than 2 per cent in value terms of total imports of commodities produced from the categories of minerals to be derived from the Area (Implementing Agreement, annex, section 3, para. 15 (a)). The eight States Parties which have made the largest investments in preparation for and in the conduct of activities in the Area, either directly or through their nationals (Annex, section 3, para. 15 (b)). States Parties which, on the basis of production in areas under their

Committee on Budget and Finance	Advisory Committee	Finance Committee
		jurisdiction, are major net exporters of the categories of minerals to be derived in the Area, including two developing States whose exports of such minerals have a substantial bearing upon their economies (Annex, section 3, para. 15 (c)). Developing States Parties, representing special interests (including large populations, States, which are landlocked or geographically disadvantaged island States, States which are major importers of the categories of minerals to be derived from the Area, States which are potential producers of such minerals and least developed States) (Annex, section 3, para. 15 (d)). Until the Authority has sufficient funds other than assessed contributions to meet its administrative expenses, the membership of the Committee shall include representatives of the five largest financial contributors to the administrative budget of the Authority. Thereafter, the election of one member from each group shall be on the basis of nomination by the members of the respective group without prejudice to the possibility of further members being elected from the group. Members with **appropriate qualifications relevant to financial matters**. States Parties shall nominate candidates of the highest standards of competence and integrity. Members shall have no financial interest in any activity relating to matters upon which the Committee has the responsibility to make recommendations.
Term		
Members shall carry out their duties for **three calendar years** and may be re-elected.	Members shall serve for a period of **three years corresponding to three calendar years**.	Members shall serve for a period of **five years and are eligible for re-election** for a further term.

Committee on Budget and Finance	*Advisory Committee*	*Finance Committee*
	Members shall retire by rotation and shall be eligible for reappointment.	In the event of death, incapacity or resignation, the Assembly shall elect for the remainder a member from the same geographical region or group of States.
Cadence		
Of the 12 members who are initially elected, 4 shall be elected for a period of one year, 4 for a period of two years and the remaining 4 for a period of three years.	The General Assembly shall appoint the members at the regular session immediately preceding the expiration of the term of office of the members or, in case of vacancies, at the next session.	None.
Functions		
Responsible for the technical examination of any document submitted to the Assembly of States Parties that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly. In particular, it shall review the proposed programme budget of the Court, prepared by the Registrar, in consultation with the other organs referred to in article 34 (a) and (c) of the Rome Statute. It shall make the relevant recommendations to the Assembly concerning the proposed programme budget. It shall also consider reports of the Auditor concerning the Court's financial operations and shall transmit them to the	See General Assembly resolution 14 (I) of 13 February 1946 and rules 155, 156 and 157 of the rules of procedure of the General Assembly.	See Implementing Agreement, section 9, para. 7.

Committee on Budget and Finance	*Advisory Committee*	*Finance Committee*
Assembly of States Parties together with any comments which it may deem appropriate.		
Review of membership		
The Assembly of States Parties shall keep under review the number of members of the Committee on Budget and Finance.	General Assembly has increased number of members. See footnote a.	Number has remained at 15.
Mode of reporting		
The Committee on Budget and Finance shall consider the proposed programme budget and shall submit its comments and recommendations to the Assembly of States Parties.	The Advisory Committee shall prepare a report to the General Assembly on the proposed programme budget to be transmitted to all Member States at the same time as the report on the budget. **The report is written.**	The Finance Committee shall prepare a report, containing its recommendations, on the programme budget proposed by the Secretary-General, for the consideration of the Council. **The report is written.**
Honorarium		
No provision.	Honorarium to the Chairman (if he/she is not actively engaged on behalf of his/her Government or another body) (General Assembly resolution 2489 (XXIII)) and subsistence allowances to members (resolution 2491 (XXIII)). See also resolution 2889 (XXVI).	No honorarium.

[a] The Advisory Committee on Administrative and Budgetary Questions was established by the General Assembly in its resolution 14 (I) of 13 February 1946. The Assembly established the membership at nine members. The number was increased to 12 pursuant to resolution 1659 (XVI) of 28 November 1961. In its resolution 2798 (XXVI) of 13 December 1971, the General Assembly, recalling the restoration of the lawful rights of the People's Republic of China in the United Nations, increased the membership from 12 to 13; and in its resolution 32/103 of 14 December 1977, desiring to increase the participation of members from developing countries, the Assembly increased the membership of the Advisory Committee from 13 to 16.

C. Procedure for election of members of the Advisory Committee

1. Allocation to the Fifth Committee

2. The members are appointed by the General Assembly on the recommendation of the Fifth Committee. Typically, the Assembly has allocated the item to the Fifth Committee for consideration.

3. The Fifth Committee, after a secret ballot, has submitted to the General Assembly a draft decision containing the names of persons recommended for appointment (see, e.g., A/365; A/55/101; A/55/PV.82; see also A/56/101).

2. First election

4. For the first election, the officers of the Fifth Committee initially proposed to submit for adoption a list of countries from which the nine members might be selected. The Committee, however, expressed preference for a selection of members on the basis of personal qualifications, due regard being had to the other requirements of the rules of procedure of the General Assembly. It then proceeded by secret ballot with the selection of the members. Similarly, it proceeded with successive votes to decide the term of office of the members (A/193, annex 33).

3. Subsequent elections

5. The Fifth Committee consistently conducted elections to select members. In the earlier years, even in cases where the number of nominees was the same as the number of seats vacant and the nominees were acceptable, the Committee proceeded with a vote by secret ballot with a two-thirds majority (A/365).

6. In later years, consistent with established practice and paragraph 16 of General Assembly decision 34/401,[2] on the rationalization of the procedures and organization of the General Assembly, the Committee has proceeded with a secret ballot only where the number of candidates proposed by a regional group has exceeded the number of available vacancies or in respect of candidates that had not been endorsed. In such cases, a separate ballot to elect a candidate has been conducted in respect of the various regional groups with candidates for a particular election. In cases where the number of available seats is the same as the number of candidates or the candidates have been endorsed by the regional group concerned, the Committee has taken its decisions by acclamation (A/55/652 and A/C.5/55/SR.20; see also A/56/625).

7. In terms of regional distribution, the allocation of seats for several years has translated into the following pattern: Africa (3); Asia (4); Eastern Europe (2); Latin America and the Caribbean (3); and Western Europe and other States (4).

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[2] Paragraph 16 reads:

"The practice of dispensing with the secret ballot for elections to subsidiary organs when the number of candidates corresponds to the number of seats to be filled should become standard and the same practice should apply to the election of the President and Vice-Presidents of the General Assembly, unless a delegation specifically requests a vote on a given election."

D. Procedure for election of the Finance Committee

1. First election

8. For the first election, the President, with the approval of the Assembly, conducted informal consultations with the chairmen of regional groups and the chairman of the Group of 77 and China as well as the coordinators of interest groups, focusing on the balance of representation between regional groups and special interest groups in accordance with the annex to the Implementing Agreement (ISBA/A/L.13, para. 6).

9. It was agreed that the Group of Latin American and Caribbean States would relinquish one of its seats on the Finance Committee at the expiration of the first two years (1997-1998) in favour of a candidate from the Asian Group for the remainder of the five-year term.

10. The Western European and Other States Group agreed to relinquish one of its seats on the Finance Committee at the expiration of the first two and a half years of the five-year term commencing in 1997 in favour of a candidate from the Eastern European Group for the remainder of the term.

11. In the light of the special circumstances of the first election, the term of office of the members of the Finance Committee for the period preceding 1 January 1997 was not counted against the five-year term (ibid., para. 10).

12. The agreement on the first composition of the Finance Committee was made without prejudice to the overall composition of the future elections and in particular to the claims of the regional groups, nor would the agreement prejudice elections to other bodies. It was understood that the situation might be reviewed in view of the circumstances prevailing after 16 November 1998 when the provisional membership of the Authority would terminate (ibid , para. 11; see also ISBA/3/A/4, para. 15).

13. On the basis of that agreement, members from China, France, Germany, India, Italy, Jamaica, Japan, Mexico (replaced by Indonesia in 1999 elections (ISBA/5/A/14, para. 7)), the Russian Federation, South Africa, Tunisia, Uganda, United Kingdom of Great Britain and Northern Ireland, the United States of America (Poland was elected following the resignation of the member from the United States of America (ISBA/5/A/14, paras. 8 and 9)) and Uruguay were elected by acclamation.

2. Subsequent election

14. In elections to the Finance Committee at the seventh session of the International Seabed Authority, in 2001, the Assembly elected China, the Czech Republic, France, Germany, India, Indonesia, Italy, Jamaica, Japan, Lebanon, Myanmar, Nigeria, the Russian Federation, Uganda, and the United Kingdom. It was understood that the election was without prejudice to the overall composition of the Committee for future elections and in particular to claims of the regional groups (ISBA/7/A/7, para. 5).

15. In terms of regional distribution, the allocation of seats for the first election was as follows: Africa (3); Asia (3+1); Eastern Europe (1+1); Latin America and the Caribbean (3-1); and Western European and Other (5-1).

16. In the second election, the distribution of Africa (2), Asia (6), Eastern Europe (2), Latin America and the Caribbean (2) and Western European and Other States (4) seems to have been influenced by the willingness of candidates to serve on the Committee (see ISBA/7/A/3 and Add.1-4).

E. Procedure for election of the Committee on Budget and Finance

1. Option A: Proceed on the basis of criteria in draft decision

(1) The election of the members of the Committee on Budget and Finance shall be a matter of substance, and thus subject to the requirements of paragraph 7 (a) of article 112 of the Statute.

(2) The persons elected shall be those candidates who obtain the highest number of votes and a two-thirds majority of States Parties present and voting, provided that an absolute majority of the States Parties constitutes the quorum for voting.

(3) The election shall be by secret ballot.

(4) This requirement may be dispensed with if the number of candidates corresponds to the number of seats to be filled unless a delegation specifically requests a vote on a given election.

2. Option B: Proceed on the basis of an agreed distribution of seats

Alternative A: Use a simple equitable geographical distribution, taking into account the distribution of the seats in the Bureau.[3]

Alternative B: Take into account other factors in determining distribution, such as the financial contribution of States Parties to the budget.

(1) The election of members of the Committee on Budget and Finance shall be a matter of substance, and thus subject to the requirements of paragraph 7 (a) of article 112 of the Statute.

(2) The persons elected shall be those candidates from each group who obtain the highest number of votes and a two-thirds majority of States Parties present and voting, provided that an absolute majority of the States Parties constitutes the quorum for voting.

(3) The election shall be by secret ballot.

(4) The requirement may be dispensed with if the number of candidates corresponds to the number of seats to be filled or in respect of candidates endorsed by the respective regional groups, unless a delegation specifically requests a vote on a given election.

[3] Note that the criteria for the Bureau under the Statute are different from applicable criteria for the composition of the Committee on Budget and Finance under the constitutive resolution.

3. Option C: Proceed on the basis of a recommendation by the Bureau

(1) The Assembly may elect by acclamation 12 candidates submitted to it on the basis of a recommendation from the Bureau. Factors in **alternatives A and B** to be taken into account. Regional groups would be consulted for nominations.

(2) An election by secret ballot would be held in the absence of agreement.

4. Cadence

For the purpose of the first election, the President of the Assembly of States Parties shall draw lots to determine, pursuant to paragraph 2 of the annex to the draft resolution on the establishment of the Committee on Budget and Finance,[4] the cadence of term of office for the members elected, or a separate vote could be held to establish cadence.

5. Election procedure to be without prejudice to the overall composition of the Committee on Budget and Finance for future elections

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[4] PCNICC/2001/1, annex I.